IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

D. Special Appeal No. 50 of 2004

Date of decision: 14th December, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Rajesh Tandon

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

D. Special Appeal No. 50 of 2004

1. Smt. Govindi Devi Upadhyay W/o Late Tara Dutt Upadhyay
2. Lalit Mohan Upadhyay S/o Late Tara Dutt Upadhyay
3. Mahesh Chandra Upadhyay S/o Late Tara Dutt Upadhyay
4. Girish Chandra Upadhyay S/o Late Tara Dutt Upadhyay
5. Deepak Upadhyay S/o Late Tara Dutt Upadhyay
6. Dinesh Chandra Upadhyay S/o Late Tara Dutt Upadhyay
   All are heirs and legal representatives of
   Late Tara Dutt Upadhyay,
   S/o Late Sri Bhagirath Upadhyay,
   R/o House No. 107, Tallital, Nainital.

……. Appellants

Versus

1. Managing Director,
   U.P. State Transport Corporation, Terhi Kothi,
   Lucknow, Uttar Pradesh.
2. Managing Director,
   Uttaranchal Road Transport Corporation,
   Uttaranchal, Dehradun.
3. Divisional General Manager (U.P. now Uttaranchal),
   U.P. State Road Transport Corporation,
   District Haridwar.
4. Regional Manager (U.P. now Uttaranchal),
   Uttaranchal State Road Transport Corporation,
   Nainital. …… Respondents

Mr. B.D. Kandpal, learned counsel on behalf of the appellants.
Mr. A.N. Sharma, learned counsel for respondents.

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Rajesh Tandon, J.

(Per Hon'ble the Chief Justice)

1. Heard Mr. B.D. Kandpal, learned counsel for the appellants and Mr. A.N. Sharma, learned counsel for the respondents.

2. The delay in filing the appeal is condoned. Heard further on merits.

3. We are not interested in entertaining this appel. The sole question in this appeal is as to whether the appellant Late Tara Dutt

Upadhyay was born on 08.01.1935 or on 15.01.1939. It is an admitted position that he entered the service on 16.06.1954, but it is the case of the appellant that he entered the service as an adolescent.

4. Much water has flown under the bridge because the appellant has been retired w.e.f. 1994. The matter was examined by the Tribunal and the Tribunal had also declared that the appellant should have been retired on 31.01.1997 and not in 1994. However, the Tribunal had left it open to the respondents to examine his correct date of birth and then, to arrive at a finding as to what was the correct date of birth of the appellant. That inquiry was, admittedly, held by the employer and they came to the independent finding that the appellant was not born in 1939, but he was, in fact, born in the year 1935. At the time of that inquiry, the appellant was, admittedly, heard. In fact, when the appellant was retired w.e.f. 1994, he did not have the advantage of any interim orders also. Therefore, the order of the Tribunal has, then, merged into the finding arrived at by the employer that the appellant was not born in 1939, but in the year1935.

5. That was further challenged before the learned Single Judge of this Court and the learned Single Judge, after due examination of all the papers filed before him, came to the independent finding that the date of birth was not 15.01.1939 as was claimed by the appellant, but was 08.01.1935. He, accordingly, confirmed that finding. This order was passed by the learned Single Judge on 23rd March, 2004, against which, a review application was made. That review application was also rejected by the learned Single Judge on the ground that no new evidence had come to the notice of the parties and that the principles of Order 47 of the Code of Civil Procedure had not been satisfied. While rejecting the review application, the learned Single Judge clearly recorded a finding that the so-called new material could not be said to be the new material at all.

6. We have seen the review order as well as the main order of the learned Single Judge and by this appeal, both these orders are sought to be assailed. We refuse to go into the question because after all, the question that has to be decided is a pure question of fact and at the appellate stage that question will not remain open. It is not the case of the appellant that he was not heard or that there was no adherence to the principles of natural justice while holding the inquiry into the date of birth. We are completely satisfied with both the orders of the learned Single Judge, main as well as the order in review, that there was no scope to hold that the appellant was born on 15.01.1939 and that in fact, his date of birth was 08.01.1935, which was reflected in his service book from time to time and which also was found to be tampered ultimately.

7. Therefore, we do not wish to entertain this appeal. However, before parting, it is the complaint of Mr. B.D. Kandpal, learned counsel that the concerned employee has not been paid his retiral benefits fully. The respondents are directed to pay the retiral benefits within two months form today. It shall be open for the concerned employee to claim the interest thereupon.

8. With these observations, the appeal is disposed of.

(Rajesh Tandon, J.) **(V.S. Sirpurkar, C.J.)**
14.12.2004 **14.12.2004**

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